

Meeting the Challenge

2008 Annual Report to Congress



To perform our fiduciary trust responsibilities to American Indian tribes, individual Indians, and Alaska Natives by incorporating a beneficiary focus and beneficiary participation while providing effective, competent stewardship and management of trust assets.

Mission Statement of the Office of the Special Trustee for American Indians



United States Department of the Interior
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, DC 20240



April 20, 2009

Dear Member of Congress:

The Office of the Special Trustee for American Indians (OST) was established by the *American Indian Trust Fund Management Reform Act of 1994*. This annual report is provided pursuant to the requirements as stated in 25 U.S.C. § 4043 (f).

Several important events occurred in fiscal year 2008. These included OST's resumed use of the Internet (after a court-ordered hiatus dating back to December 2001) and the opportunity for beneficiaries to receive trust income disbursements via a debit card option. This report also provides information and updates on significant accomplishments and reforms in process.

I hope you find this report helpful. Please do not hesitate to contact my office at 202-208-4866 for more information.

Sincerely,

Donna Erwin
Acting Special Trustee for American Indians



“...not only has the present and future reliability of the Indian trust system greatly increased, but the repository at Lenexa and the technological tools that have been developed to examine historical transactions have created a wellspring of information from which scholars will continue to learn about the history of the Indian trusts, Indian lands, and Federal-Indian relations.”

Judge James Robertson, United States District Court for the District of Columbia
August 7, 2008, Memorandum on the Elouise Cobell, et al., vs. Dirk Kempthorne,
Secretary of the Interior, et al., class action lawsuit

The Indian trust is the largest land trust in the United States. The Department of the Interior (the Department) has managed this trust for more than a century in fulfillment of the Department's fiduciary responsibilities to American Indians and Alaska Natives.

The Office of the Special Trustee for American Indians (OST) has administered the financial assets of this trust for more than a decade. Significant portions of the people OST serves depend on trust disbursements to meet their basic needs. Failure to receive a trust payment timely is not merely an inconvenience for beneficiaries; it can mean no money for rent, food, clothes, shelter and medical needs. Each OST employee knows his or her professionalism and commitment to duty can make the difference in preventing a personal disaster somewhere in Indian country.

The Special Trustee submits to Congress an annual report detailing significant progress of trust reform. In 2007, the Special Trustee submitted a more comprehensive report chronicling progress since 1994, entitled *Restoring Trust: The Reformation of Indian Trust Management (1994-2007)*. This 2008 report updates Congressional members on OST's progress toward comprehensive, effective management of the Indian trust.



Responding to a History of Concerns

American Indians and others had long raised concerns about the management of the Indian trust, which was established as a result of the General Allotment Act of 1887, also known as the Dawes Act. Over the decades, through the courts and legislation, a body of laws, regulations and policies was developed to address these concerns. But it was the 1992 report, *Misplaced Trust*, from the Environment, Energy, and Natural Resources Subcommittee of the House Committee on Government Operations that galvanized Congress to pass the American Indian Trust Fund Management Reform Act (Reform Act) in 1994.¹

OST, established by the Reform Act, was charged with effective management of trust responsibilities to Indian tribes and individual Indians. Initially, OST was to oversee and coordinate reforms within the Department ensuring that trust responsibilities of the Bureau of Indian Affairs

¹ For a succinct, comprehensive history of the Indian trust from 1887 through the passage of the 1994 Act, see *Restoring Trust: The Reformation of Indian Trust Management*, published by OST in 2007.

(BIA), the Minerals Management Service (MMS) and the Bureau of Land Management (BLM) were “effective, consistent and integrated.”

Within two years of passage of the Reform Act, financial functions of the trust were assigned to OST by a 1996 Secretarial Order that reflected the will of Congress, as expressed in fiscal year 1996 appropriations report language. The Office of Trust Funds Management (OTFM) was moved from BIA to OST. This move brought financial accounting, investing, reporting and disbursing functions to OST.

As reform plans moved forward, other functions were transferred to OST through Secretarial Orders. The Office of Appraisal Services was moved to OST in 2002. The Office of Historical Trust Accounting (OHTA) was realigned in 2007 to report directly to the Special Trustee. OHTA was created to plan, organize and execute the historical trust accounting of Individual Indian Money (IIM) accounts. In addition to its historical accounting activities, OHTA is heavily engaged in providing litigation support to the Office of the Solicitor and the Department of Justice for more than 96 tribal lawsuits.

The process of reforming Indian trust management has been long and challenging and required a comprehensive examination and analysis of existing business practices. In 2002, the bureaus and offices in the Department with fiduciary responsibilities underwent a rigorous reengineering effort. This resulted in the Comprehensive Trust Management (CTM) plan, which provides the overall trust business goals and objectives for the Department

to achieve its fiduciary trust responsibilities. The CTM plan defines a collaborative approach among BIA, BLM, MMS, the Office of Hearings and Appeals and OST for improving performance and accountability in managing the Indian trust.

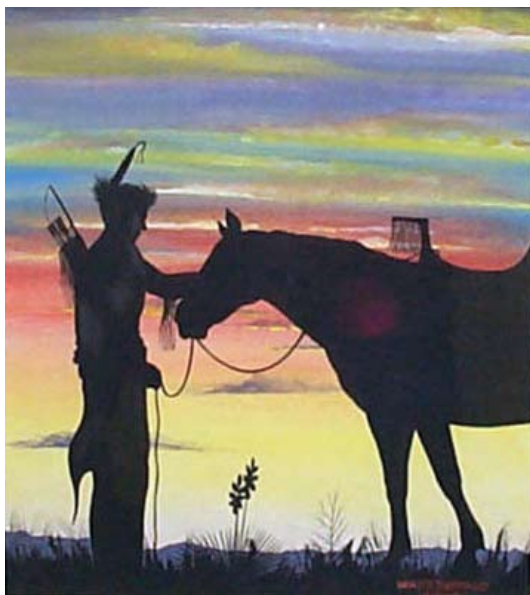
The reengineered business model for the Department, which aligns existing business processes with requirements of the CTM, is the Fiduciary Trust Model (FTM). When fully implemented, the FTM will transform the trust’s business processes into more efficient, consistent, integrated and fiscally responsible processes that meet the needs and priorities of beneficiaries and improve the working

environment of OST employees. Objectives of the FTM include: business process automation, standardization, accountability, safeguarding assets and resources and streamlined beneficiary services through a call center and the primary local point of contact.

Prior to the Reform Act, Indian trust management had been treated like any other government program. The FTM addresses this deficiency with programs and policies designed to ensure that the fiduciary responsibility is effectively and efficiently met and that

beneficiary needs are addressed.

OST follows a risk based approach in meeting fiduciary obligations and has a three pronged risk management program: 1) manager self-assessments, 2) the OST Office of Trust Review and Audit internal reviews and 3) an independent third-party annual audit. OST implemented an automated risk management tool to track reviews and test results to comply with more stringent government reporting requirements. OST participates as a member of an inter-bureau test team to address issues that have the potential to impact trust financial statements.



² *The Cobell, et al., v. Salazar, Secretary of the Interior, et. al.*, lawsuit, filed in 1996, seeks an historical accounting of monies held in the IIM accounts of a class of individual Indian beneficiaries.

Accomplishing Major Reform

The reforms implemented under OST leadership have resulted in a radical transformation of Indian trust management, as noted by both the Government Accountability Office and Judge Robertson, the presiding judge in the *Cobell*² case. In accordance with the authority granted to the Special Trustee, the following trust reforms have been implemented:

- ◆ **Trust Funds Accounting System (TFAS)** – Early in the reform effort, OST adopted TFAS as its trust accounting system model. This is the same off-the-shelf software used by eight of the top fifteen major private sector trust institutions across the nation. This comprehensive system is able to interface with other trust systems, including Trust Asset and Accounting Management System (TAAMS), the Lockbox facility and financial asset pricing services. This interface supports automated collections and disbursements. TFAS allows the scheduling of periodic statements of performance for individual Indians and tribal account holders for whom OST has current addresses. In the past, recurring payments (including budgeted payments for restricted access accounts) required manual encoding. Daily balances are also available to beneficiaries through TFAS. The system facilitates the investing of collected funds and the daily pricing of securities to ensure beneficiary funds are quickly made productive. On a monthly basis, OST reconciles financial investment holdings on TFAS with the custodian of the securities. TFAS also provides tools to reconcile daily financial activity with the Treasury.
- ◆ **Trust Asset and Accounting Management System (TAAMS)** – The conversion of all BIA regions from the Trust Fund Receivable module to the new TAAMS invoicing and distribution module was completed in partnership and collaboration with BIA in fiscal year 2008. The system is designed to support reengineered business processes. It enables employees to track leasing



activity, ownership and income distribution electronically to ensure efficiency and accountability.

- ◆ **Certification and Accreditation of Information Technology (IT) Systems** – OST's IT system is certified and accredited in accordance with the Federal Information Security Management Act and the Technology Management Reform Act of 1996, which allows for much more decentralized acquisition of data processing equipment and services. OST resumed Internet connectivity per Judge Robertson's order dated May 14, 2008.
- ◆ **Lockbox** – The commercial lockbox is centralized at a secure location for the receipt, processing and depositing of payments. Lockboxes are a financial industry best practice for handling check remittances because they have proven to be efficient and timely while minimizing the risk of loss, theft or fraud. Under the OST lockbox system, companies or individuals who remit payments for the use of Indian trust resources forward payments to a designated United States Post Office box in Arizona, instead of 100 plus agencies and offices throughout the country. The lockbox contractor captures and sends receipt information electronically to OST for posting directly to the beneficiary accounts. This eliminates the past practices of receiving and holding checks in suspense accounts until ownership is updated. It also eliminates the potential of misplacing a check or mailing a check for deposit to a Treasury General Account at a designated bank. During fiscal year 2008, in excess of \$560 million was processed through the lockbox and over \$440 million (78%) was posted to beneficiaries' accounts within two days of receipt into the lockbox. Since inception in 2005, the lockbox has received approximately \$1.489 billion.
- ◆ **Debit Cards** – In collaboration with the Treasury, a national roll-out of OST's debit card program is underway. The target audience for the use of debit cards is those beneficiaries who



do not have regular banking relationships. An independent survey (conducted during the third quarter of fiscal year 2008) of the debit card pilot program revealed an overall satisfaction rating of 77 percent among users. By the end of fiscal year 2008, over \$1.7 million had been disbursed through debit cards to Indian trust beneficiaries.

- ◆ Direct Deposit – Automation gained through the use of TFAS has increased, and continues to increase, the use of direct deposit for trust beneficiary disbursements that are faster, safer and more cost effective than issuing payments by paper checks. OST has tripled the use of direct deposits since December 2006.
- ◆ Statements of Performance – Since 2000, OST has been providing tribal and IIM account holders with periodic scheduled statements. In 2005, because of new trust technology and procedures, OST began distributing account statements that include enhanced information regarding sources of funds, encumbrance information (who is leasing the account holder's trust property, duration of the lease) and a listing of the trust property owned (with the locations of those properties). Today, IIM account statements also describe the impact of realized gains and losses on interest rates. In fiscal year 2008, OST delivered over 700,000 statements of performance to IIM and tribal beneficiaries.

Tribes can now receive their statements of performance electronically via CD. Cur-

rently, 97 tribes do so, which enables them to conveniently view and search financial data on their computers. CDs reduce the amount of paper statements tribes must manage.

In addition to the statements of performance provided to beneficiaries, OST currently prepares monthly financial statements pursuant to the Department's requirement. The reports are reviewed by management on a quarterly basis and annually audited. OST also provides periodic reports of current activity to the Treasury, OMB, BIA and the courts.

- ◆ Trust Beneficiary Call Center (TBCC) – In December 2004, OST established a centralized call center at its headquarters office in Albuquerque, New Mexico. The TBCC provides a central resource for beneficiary questions and provides prompt, consistent information in response to trust inquiries. Beneficiary contacts, including calls and referrals are tracked in an automated tracking system. The TBCC receives thousands of calls annually and provides first line resolution for more than 90 percent of these calls. First-line resolution signifies that TBCC representatives were able to resolve inquiries without delay, referral or escalation. When calls are resolved immediately, OST and BIA staff can work on other program-specific functions, which results in higher productivity. The TBCC hours of operation are Monday through Friday 7:00 a.m. to 6:00 p.m. and Saturdays 8:00 a.m. to noon,

Mountain Time. Since its inception through September 30, 2008, the call center has received approximately 400,000 calls from beneficiaries.

- ◆ **Fiduciary Trust Officers (FTO)** – A major fiduciary trust initiative was the addition of 52 FTOs, who are the primary local points of contact for trust beneficiaries at the agency level. The addition of FTOs allows BIA staff to devote more time to processing transactions, leasing land, ensuring lease compliance, preparing probates for adjudication and partnering with tribal governments to address and resolve local issues. OST also employs six (6) Regional Trust Administrators (RTAs) with extensive backgrounds in fiduciary trust management to manage the FTOs.

FTOs conduct extensive outreach events across Indian country during the day, evening and weekends. Outreach events are held at powwows, rodeos, senior centers, tribal headquarters, community centers and federal buildings, just to name a few. Beneficiaries are provided information on such items as their accounts, statements of performance, estate planning, financial planning, leasing, probates, Whereabouts Unknown (WAU) account holders, the American Indian Probate Reform Act, direct deposit and debit cards. During fiscal year 2008, FTOs and RTAs, in collaboration with BIA and other federal agencies that play roles in managing Indian trust assets, conducted over 5,200 outreach events.

- ◆ **Annual Audit** – Since fiscal year 1995, an independent annual audit of the Trust Funds

Financial Statements for both the *Tribal and Other Trust Funds* and *Individual Indian Trust Funds* has been completed. The audit includes a Report on Internal Controls and a Report on Compliance with Laws and Regulations. As of fiscal year 2008, there is no material weakness reported for *Tribal and Other Trust Funds* and only one historical material weakness remains for *Individual Indian Trust Funds*. This item is not within the control of OST.

- ◆ **Records Management** – Millions of Indian trust records are safeguarded and protected for future



use at the American Indian Records Repository (AIRR) in Lenexa, Kansas. Early in 2000, OST established a partnership with the National Archives Records Administration (NARA) for Indian trust records storage. AIRR was opened in May 2004. Today, more than 180,000 boxes containing approximately 450 million pages of records are stored at AIRR and information from each box is entered into an electronic, searchable database. A box tracking system was created that allows any box in the facility to be located within five minutes. The facility continues to receive boxes at the Annex (where they are indexed) from BIA agencies and OST offices in the field as the offices clear out their inactive records. The only BIA

and OST Indian records that are not stored at AIRR are those that have become legal property of NARA, and active records at Departmental offices or records retained at BIA agency offices. Preservation and storage of records at AIRR is considered by NARA to be the best available. OST has provided Vital Records training to more than 1,600 BIA, OST and tribal employees as of the end of fiscal year 2008.

- ◆ Certified Federal Surveyors (CFedS) Program - The FTM supported a federal surveyor certification program. The CFedS program was developed to expand the cadre of qualified surveyors and address the survey backlog in Indian country. The program teaches state licensed surveyors to survey or resurvey federal boundaries under the jurisdiction of the BLM. Since May 2007, a total of 203 surveyors have been certified in 40 states, with 65 surveyors graduating in fiscal year 2008.
- ◆ BLM Indian Lands Surveyors (BILS) - The FTM cadastral survey team recommended that the BLM recruit and place a cadastral surveyor in each of the 12 BIA regions. The primary responsibility of BILS is consultation and guidance for BIA and tribal real estate programs regarding boundaries, surveys, land ownership and other legal and technical survey issues. They ensure survey work complies with cadastral survey laws and regulations and are available to provide oversight and monitoring for cadastral surveys performed by graduates of the CFedS program.
- ◆ Training – Indian Affairs and OST opened, and continue to expand training at, the state-of-the-art National Indian Programs Training Center in Albuquerque, New Mexico. The Department now has a training program for trust functions, including training conducted by the Cannon Financial Institute, which is the leading trust trainer in the nation for the private sector fiduciary industry. Implementation of Cannon training marked the first training program developed specifically to focus on fiduciary Indian trust. In fiscal year 2008, the Cannon Financial Institute *Certified Indian Fiduciary Trust Specialist* (CIFTS) designation was awarded to 16 OST and 2 BIA employees bringing the total of federal employees with the CIFTS designation to 98, as of the close of fiscal year 2008. The *Certified Indian Trust Examiner* designation was awarded to 22 OST employees in fiscal year 2008. This group constitutes the first federal employees with this designation.



Meeting Ongoing Challenges

Reforming Indian trust management has taken more than a decade, primarily due to the unique nature of the Indian trust, which produced a complex set of management challenges. Many of those challenges have been overcome, as chronicled in the preceding section. Other challenges, however, are structural in nature and are likely to persist as long as the Indian trust exists.

Challenge: Resolve the fractionation issue in Indian country. Fractionation is numerous undivided interests in a tract of trust property. Fractionation makes it difficult to maintain title, manage probates in a cost effective manner and prudently manage the trust property as expected of a fiduciary. Nearly two-thirds of account holders receive less than \$100 per year.

Benefit of Overcoming Challenge: Consolidated ownership in fractionated interests will result in fewer accounts to manage and property having more potential to be leased and generate income. It should also result in beneficiaries taking a more active role in managing their trust assets. Cost savings could reasonably be expected to reach \$100 million annually.

Challenge: Improve beneficiary account income and liquidity without incurring unnecessary risk by obtaining approval from the Treasury to provide a Par Value Specials fund to Indian trust accounts.

Indian trust funds are invested in the Treasury Overnighter Fund and in longer term Treasury and agency fixed-income securities. Longer maturity securities currently yield three to five percent, but they are subject to potential loss of deposited value.

Benefit of Overcoming Challenge: The Treasury offers “par value specials” to certain agencies including the Social Security Administration, the Thrift Savings Fund and the Railroad Retirement Fund. A par value special is issued by the Treasury with an interest rate that reflects longer maturity Treasuries, but it is purchased and redeemed at par so that its redemption value is insulated from future market conditions. It offers the safety of the Treasury Overnight Fund with interest rates reflective of longer maturity securities. Investing in par value specials may also mitigate many of the investment-related litigation issues raised by Indian trust beneficiaries.

Challenge: Maintain a long-term institutional commitment to the continuous reform of Indian trust management, even in the absence of controversy or pending litigation.

Benefit of Overcoming Challenge: Continuous reform of Indian trust management will minimize the risk of future litigation by tribes and individual Indians, which will reduce appropriated dollars diverted to costly litigation. A long-term institutional commitment to reform will focus on managing trust assets.

Challenge: Ensure that all Indian Affairs staff and tribal users consistently use newly implemented trust systems and do not revert to older systems, which are more familiar but less reliable.

Benefit of Overcoming Challenge: Ensuring that newly implemented trust systems are consistently used will minimize the risk of future litigation by improving accuracy, timeliness and accountability. Standardized trust systems have the added benefit of reducing the need and cost of staff to conduct manual processes, which add risk to the processes.

Challenge: Standardize management processes and procedures across all federal agencies and tribes involved in managing Indian trust assets.

Benefit of Overcoming Challenge: Standardizing processes and procedures for managing Indian

trust assets through consistent federal and tribal management and accounting will minimize risks and the potential for future litigation claims.

Challenge: Implement an imaging system and build the necessary infrastructure to support the paperless exchange of documents among agencies.

Benefit of Overcoming Challenge: Reducing the physical management of hard copy documents will result in the Department being a more efficient organization and also bring Indian Affairs in closer compliance with the Paperwork Reduction Act and the E-Gov initiative. The use of electronic forms will result in data having to be entered only once. Trust systems will be populated automatically from the one entry, thus mitigating the risk of errors due to multiple entries made in multiple systems.

Challenge: Support the Department’s response to ongoing tribal and individual Indian litigation with limited financial and personnel resources.

Benefit of Overcoming Challenge: OST will maximize the efficient use of financial and personnel resources to carry out OST’s core mission.

Challenge: Resolve historical accounting issues so OST can obtain an unqualified opinion for its financial statements. There are a handful of historical accounting discrepancies that have been identified and isolated, but cannot be corrected without Congressional or other external assistance.

Benefit of Overcoming Challenge: An unqualified opinion would improve public trust in the accounting and management of Indian trust funds





Looking Forward

Under OST's oversight, the Indian trust is no longer operated as an ordinary government program; it is a fiduciary trust managed by experts in trust matters. Integral to this new mode of operation is a commitment to continual improvement: constantly analyzing what we are doing and finding better ways to do it.

Looking toward 2009, OST will scrutinize current reforms for better performance and look over the horizon to future reforms that will enhance services to beneficiaries.

- ◆ Although many of the core problems associated with Indian trust management have been addressed and corrected, the Department continues its efforts to resolve legacy issues: addressing the backlogs of probates and appraisals, continuing the ongoing regulatory update initiative to improve and streamline probate processes and reducing the number of WAUs.
- ◆ OST will create a performance officer position to ensure that skill/competency modeling is produced on reformed business processes and that performance metrics are developed and aligned to actual productivity. This position also will be responsible for ensuring consistent statistics are used throughout the organization.
- ◆ Information technology (IT) innovations will play a very large role in the future of Indian trust management. OST is aggressively exploiting IT improvements in order to make trust management more efficient and expeditious in getting money to individual and tribal beneficiaries. IT reforms that had been stymied or halted by

the court-ordered Internet disconnection are now moving forward again thanks to reconnection, which the court allowed in May 2008.

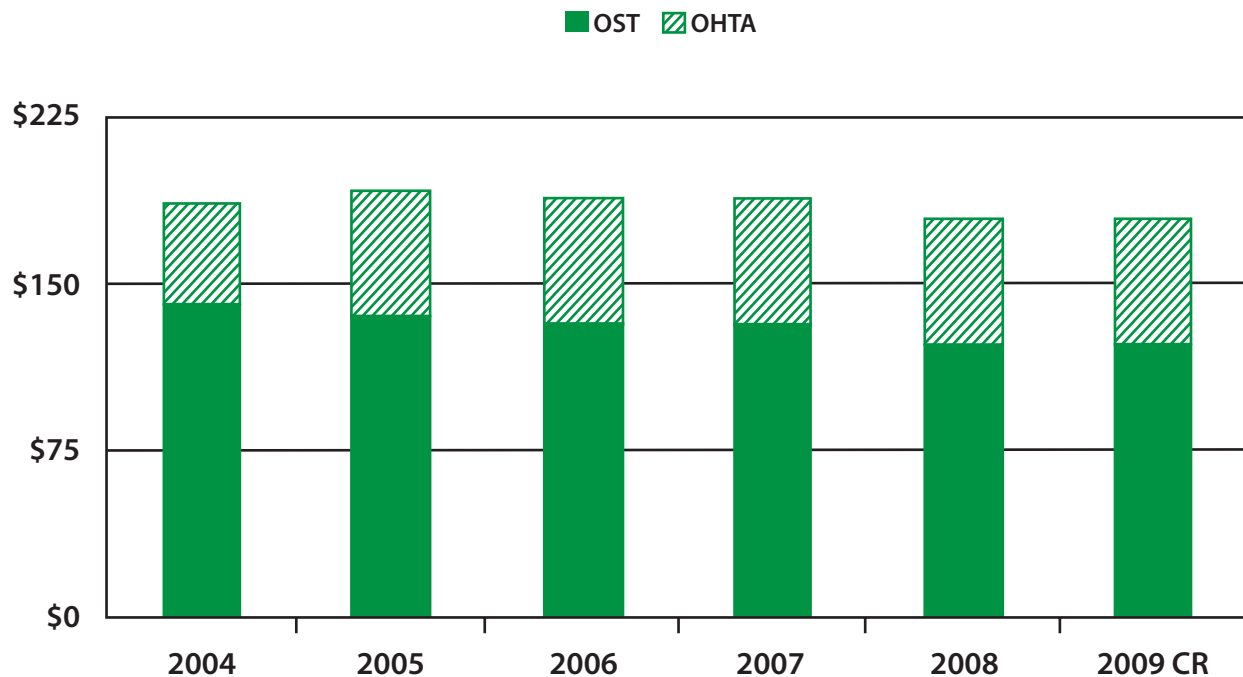
A primary focus of OST's IT reform is to replace paper documents with electronic documents wherever possible. OST is working toward implementing a system that will expedite the clearing of checks received from lessees. OST also plans to pilot PayGov, an online payment option for lessees. OST will encourage greater use of direct deposit and debit cards by beneficiaries to alleviate printing and mailing paper checks and will provide tribal account holders online access to their statements of performance.

Other future projects involve integrating existing data with Geographic Information System (GIS) technology and leveraging this combination. The Spatial Project Team has reviewed existing spatial data residing on various Departmental databases. Their goal is to provide GIS capabilities for mapping and tract data. This project is expected to be expanded to assist with enforcing lease compliance.

- ◆ OST has long encouraged greater tribal involvement in trust asset management. In the future, OST hopes to make even greater strides in this direction. OST will support the Department's efforts to improve land management for tribes and individuals, including the use of advanced technologies; will extend to tribes access to reformed Department information systems to build tribal capacities for operating trust programs under P.L. 93-638 agreements; and will expand training opportunities for Indian Affairs employees and tribal employees to provide more effective program management.

Federal Trust Programs 2004 - 2009 Budget

(Dollars in Millions)



Funding Changes

2009 vs. 2008: -\$0

2008 vs. 2007: -\$9.7 million

Key Changes:

\$2.8 million – Rescission

\$1.5 million – Data Quality & Integrity

\$1.1 million – Probate Clean Up

\$1.1 million – Appraisal Services

2007 vs. 2006: -\$477k – fixed costs

2006 vs. 2005: -\$4.8 million

Key Changes:

- \$2.8 million – Rescission

- \$3 million – Information Technology/Trust Records

- \$1.1 million – Appraisal Services

+\$1.9 million – Budget, Finance, & Administration

2005 vs. 2004: +\$6.2 million

Key Changes:

-\$16 million – IT/TAAMS/Realty (to BIA)

+10.8 million – Appraisal Services (from BIA)

+12.7 million – OHTA



Office of the Special Trustee for American Indians

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